

9 KAR 1:060. Requirements relating to fundraising activities and charitable nonprofit organizations.

RELATES TO: KRS 11A.010, 11A.045, 11A.055

STATUTORY AUTHORITY: KRS 11A.055, 11A.110(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) authorizes the Executive Branch Ethics Commission to promulgate administrative regulations to implement KRS Chapter 11A. KRS 11A.055 authorizes state agencies or public servants to solicit and accept donations for charitable nonprofit organizations or for programs for crime prevention, drug and alcohol abuse prevention, or traffic safety. This administrative regulation establishes requirements relating to those fundraising activities and provides guidance related to the creation of charitable nonprofit organizations ensuring compliance with KRS 11A.045.

Section 1. Definitions. (1) "Affiliated" means a charitable nonprofit organization that:

- (a)1. Engages in activities for the benefit of an agency; or
2. Furthers the statutory or regulatory mandates of the agency through the use of contributions solicited from the public; and
- (b) Is not established, created, or controlled by the agency.
- (2) "Agency" is defined by KRS 11A.010(10).
- (3) "Charitable nonprofit organization" means an entity or corporation:
 - (a) Described in 26 U.S.C. 501(c)(3);
 - (b) Granted tax exempt status under 26 U.S.C. 501(a); and
 - (c) That accepts charitable contributions.
- (4) "Commission" is defined by KRS 11A.010(2).
- (5) "Controlled" means that an agency or a public servant maintains control of a charitable nonprofit organization if at least one (1) of the following apply:
 - (a) Public servants of the agency serve as a majority of the officers for or represent a majority of the voting members of the governing board of the charitable nonprofit organization;
 - (b) The agency or the public servant selects, elects, appoints, or removes a majority of the officers or voting members of the governing board of the charitable nonprofit organization or a portion thereof;
 - (c) The agency provides on an ongoing basis staff, resources, or office space with no recompense from the charitable nonprofit organization to the agency unless otherwise authorized by statute or the staff, resources, or office space are provided pursuant to an agreement made in accordance with the provisions of KRS Chapter 45A; or
 - (d) The public servant directs the use of the funds of the charitable nonprofit organization or has signatory authority of the charitable nonprofit organization's accounts.
- (6) "Created" means an agency or a public servant has filed articles of incorporation with the office of the Secretary of State to form the charitable nonprofit organization.
- (7) "Established" means an agency or a public servant:
 - (a) Files documentation with the Internal Revenue Service to create the charitable nonprofit organization pursuant 26 U.S.C. 501(c); or
 - (b) Drafts bylaws or other governing documents under which a charitable nonprofit organization operates.
- (8) "Public servant" is defined by KRS 11A.010(9).
- (9) "Recompense" means payment by a charitable nonprofit organization to an agency either through monetary compensation or non-monetary consideration given in exchange for the value of rental or use of state-owned facilities, agency personnel, goods, resources, or services.

Section 2. For the purposes of this administrative regulation, A public servant shall be limited to an individual who is acting on behalf of a state agency in the course and scope of his or her state employment, unless otherwise authorized by statute.

Section 3. Category I. (1) A charitable nonprofit organization controlled by an agency shall constitute a part of that agency.

(2) A charitable nonprofit organization under subsection (1) of this section shall be subject to the Executive Branch Code of Ethics, pursuant to KRS Chapter 11A.

(3) To ensure compliance with KRS 11A.045, a charitable nonprofit organization under subsection (1) of this section shall not accept confidential contributions.

(4) Public servants of an agency shall not solicit contributions to the charitable nonprofit organization under subsection (1) of this section if the agency is prohibited from accepting these contributions under KRS 11A.045.

Section 4. Category II. (1) A Category II charitable nonprofit organization shall be an entity that is created or established, but not controlled, by an agency.

(2) A Category II charitable nonprofit organization may support similar goals of the agency and shall not be subject to the provisions of Section 3 of this administrative regulation if it does not provide funding directly or indirectly to the agency unless otherwise authorized by statute.

Section 5. Category III. (1) A Category III charitable nonprofit organization shall be an entity that is not created, established, or controlled by an agency, but may be affiliated with an agency.

(2) A Category III charitable nonprofit organization shall not be subject to the provisions of Section 3 of this administrative regulation.

Section 6. (1) Pursuant to KRS 11A.055, all funds raised by an agency or a public servant on behalf of a Category II or III charitable nonprofit organization shall be delivered to the charitable nonprofit organization or other statutorily authorized program. An agency involved in the fundraising effort shall not retain any funds.

(2) An agency or public servant shall not enter into a contract with an entity to raise funds for a Category II or III charitable nonprofit organization or program pursuant to KRS 11A.055 if the contract provides that the agency shall:

- (a) Be paid out of the funds raised;
- (b) Receive a commission based on funds raised; or
- (c) Receive any portion of the funds to be delivered to the charitable organization or program.

(3) Except as provided in Section 7 of this administrative regulation, an agency may assign or permit a public servant to work on behalf of a Category II or III charitable nonprofit organization if:

(a) The public servant does not devote more than 100 hours per calendar year working on behalf of a Category II or III charitable nonprofit organization unless otherwise authorized by statute; and

(b) The agency determines in writing that these working hours are necessary to fulfill the statutory, regulatory, or programmatic mandates of the agency.

Section 7. An agency may devote state time and resources to any category charitable nonprofit organization without recompense from the charitable nonprofit organization if:

- (1) These activities are conducted for a cooperatively sponsored event; and
- (2) The event is conducted to further the statutory, regulatory, or programmatic mandates of the agency. (31 Ky.R. 508; 697; eff. 11-5-2004; 43 Ky.R. 754, 1390, 1504; eff. 3-31-2017.)